



INTELLECTUAL

LAW OFFICES OF P.B. TUFARIELLO, P.C.

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SPECIALIZING IN
PATENTS, TRADEMARKS,
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THERE TO

March 16, 2012

VIA ECF

Honorable Arthur D. Spatt
United States District Judge
P.O Box 9014
Central Islip, NY 11722-9014

Re: GENOMETRICA RESEARCH, INC.
v. GORBOVITSKY, et al.
Case No.: 11-CV-5802(ADS)(AKT)
United States District Court, E.D.N.Y.
Our File No.: 7375-G

Dear Judge Spatt:

We represent Plaintiff Genometrica Research, Inc. ("Genometrica") in connection with the above-referenced matter. We write to seek clarification of the Court's Order dated February 2, 2012, by which the Court extended the time for Genometrica to respond to Defendants' Motion to Dismiss the Complaint until April 2, 2012. A copy of that Order is annexed hereto as Exhibit A. See also Docket No. 10. Genometrica respectfully requests that the Court clarify the Order so that it specifically extends Genometrica's deadline both to oppose the motion to dismiss and to amend the Complaint as of right.

Beginning on January 24, 2012, Genometrica, through counsel, requested that Defendants stipulate to an extension of time for "Plaintiff to file its opposition papers to Defendants' motion to dismiss the complaint, and/or otherwise file an amended complaint and/or otherwise plead...." Copies of the proposed stipulation and email requests are annexed hereto as Exhibit B. See also, Docket No. 9-1 at p. 7, ¶ 1. Because Defendants refused to stipulate to the extension, Genometrica wrote to this Court on February 1, 2012, seeking the extension. See Docket No. 9. That letter stated that Genometrica needed additional time to respond to the Motion to Dismiss because, inter alia, Genometrica was contemplating filing an Amended Complaint. Id.

The Court's Order, states that "[t]he Plaintiff's request for an extension to file its opposition to the Defendants' motion to dismiss is granted until April 2, 2012." Exhibit A at p. 2; see also Docket No. 10 at p. 2. The Order does not mention the Amended Complaint that Genometrica intends to file.

INTELLECTUAL LAW

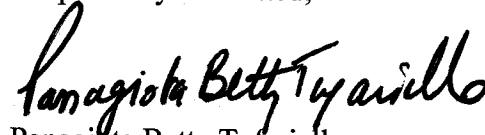
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Hon. Arthur D. Spatt
U.S.D.J. - E.D.N.Y.
March 16, 2012
Page 2

Out of an abundance of caution, Genometrica respectfully requests that the Court clarify its Order so that it specifically includes an extension of time both to respond to the Motion to Dismiss and to amend the Complaint as of right. Genometrica does not wish to burden the Court or the Defendants with an unnecessary motion for leave to amend the Complaint.

Your Honor's patience and professional courtesies are greatly appreciated.

Respectfully submitted,


Panagiota Betty Tufariello

CC: Robert Kenney (via E-Mail)
Hofheimer Gartlir & Gross LLP
530 Fifth Avenue
New York, New York 10036
Telephone: (212) 818-9000
Facsimile: (212) 897-6933
Email: rkenney@hgg.com

INTELLECTUAL LAW

THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Hon. Arthur D. Spatt

U.S.D.J. - E.D.N.Y.

March 16, 2012

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CERTIFICATE OF SERVICE

I, Panagiota Betty Tufariello, hereby certify that on March 16, 2012, I caused a true and correct copy of the foregoing Letter to the Honorable Arthur D. Spatt to be filed and served via the court's ECF system on all parties registered to receive notice and on the parties listed below in the manner indicated.

Via Express Mail and E-Mail:

Arthur D. Morrison

11 Skyline Drive

Hawthorne, New York 10532

akatz@xand.com

William V. Rapp

85 River Road

Scarborough, New York 10510

wrapp@law.pace.edu


Panagiota Betty Tufariello

EXHIBIT A



INTELLECTUAL LAW

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DIF
CIF

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SPECIALIZING IN
PATENTS, TRADEMARKS,
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THERE TO

February 1, 2012

VIA ECF

Hon. Arthur D. Spatt
United States District Judge
P.O. Box 9014
Central Islip, NY 11722-9014

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 02 2012 ★

LONG ISLAND OFFICE

Re: GENOMETRICA RESEARCH, INC.
v. GORBOVITSKY, et al.
Case No.: 11-CV-5802(ADS)(AKT)
Our File No.: 7375-G

Honorable Judge Spatt:

We represent Plaintiff Genometrica Research Inc. (hereinafter "Genometrica") in connection with the matter referenced herein above. We write to request a sixty (60)-day extension of time for Genometrica to file its Opposition to Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) (Court Doc. No. 7). The requested extension will move Genometrica's deadline to file its opposition papers from February 2, 2012 to April 3, 2012.

This is Genometrica's First Request for a Continuance in connection with Defendants' Motion to Dismiss.

Defendant's Motion raises a number of complex issues. Further, Genometrica's response to the motion may necessitate, among other things, affidavits by Genometrica's officers, who are currently outside the United States, and an Amended Complaint. The Amended Complaint itself will likely contain new complex issues, additional facts, and additional causes of action. While we have already begun discussions with Genometrica's officers regarding many of the issues that Defendants raised in their motion, we will be unable to finalize any affidavits, or come to an understanding about additional causes of action, until Genometrica's officers are back in the United States. We expect that Genometrica's officers, who are foreign nationals, will arrive back in the United States, some time within the next 30 days.

Pursuant to the Fed. Rules of Civil Procedure, the Local Rules of the Eastern District of New York and your Honor's Individual Rules, we have been discussing all of the foregoing with Defendants' counsel Mr. Rapp and Mr. Morrison since January 24, 2012. Annexed hereto are copies of e-mails we have exchanged with counsel together with our proposed stipulation for the continuance. Notwithstanding our numerous attempts, the most recent of which was earlier today,

INTELLECTUAL

THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Hon. Arthur D. Spatt
U.S.D.J. - E.D.N.Y.
February 1, 2012
Page 2

Defendants continue to refuse, without reason, the requested professional courtesy of an extension. Their continued refusal has necessitated this letter request.

We respectfully ask that the Court grant this request for an extension.

Your Honor's patience and professional courtesies are greatly appreciated.

Respectfully submitted,

Panagiotis Betty Tufanello
Panagiotis Betty Tufanello

PBT:ic

c.c. Robert Kenney
Hofheimer Gartlir & Gross LLP
530 Fifth Avenue
New York, New York 10036
(212) 897-6919 Direct phone
(212) 897-6933 Direct fax
(212) 818-9000 Phone
(212) 869-4930 Fax
rkenney@hgg.com

The plaintiff's request for an extension to file its opposition to the defendants' motion to dismiss is granted until April 2, 2012. No further extensions will be granted. So Ordered.

151 ARTHUR D. SPATT

Arthur D. Spatt, U.S.D.J.

MOVANT'S COUNSEL IS DIRECTED TO SERVE A
COPY OF THIS ORDER ON ALL PARTIES UPON
RECEIPT VIA FACSIMILE.

2/2/12

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GENOMETRICA RESEARCH INC.

Plaintiff,

-against-

**BORIS GORBOVITSKI, VERA GORBOVITSKI
a/k/a VERA GORFINKEL, and ADVANCED
BIOMEDICAL MACHINES INC.,**

Defendants.

Case No. 11-cv-5802 (ADS)(AKT)

STIPULATION AND ORDER FOR EXTENSION OF TIME

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and Defendants, through their undersigned respective counsel, as follows:

1. The time for the Plaintiff to file its opposition papers to Defendants' motion to dismiss the complaint, and/or otherwise file an amended complaint and/or otherwise plead, shall be extended by sixty days, up to and including April 3, 2012.
2. The time for Defendants to file their reply papers in further support of Defendants' motion to dismiss the complaint shall be extended up to and including April 26, 2012.
3. This stipulation may be signed in counterparts and a facsimile signature or signature transmitted by other electronic means shall have the same effect as the original.

Dated: New York, New York
January 27, 2012

INTELLECTULAW,
THE LAW OFFICES OF P.B.
TUFARIELLO, P.C.

ARTHUR MORRISON

Panagiota Betty Tufariello (PBT 3429)
25 Little Harbor Road
Mount Sinai, New York, 11766
Telephone: (631)476-8734
betty@intellectulaw.com

Arthur Morrison (AM5678)
11 Skyline Drive
Hawthorne, New York 10532
Telephone: (914)592-8282
akatz@xand.com

Robert Kenney (RK 6024)
HOFHEIMER GARTLIR & GROSS, LLP
530 Fifth Avenue
New York, New York 10036
Telephone: (212) 818-9000
rkenney@hgg.com

William V. Rapp
85 River Road
Scarborough, New York 10510

Counsel for Defendants

Counsel for Plaintiff

SO ORDERED:

Hon. Arthur D. Spatt
United States District Judge

Betty Tufariello

From: Betty Tufariello
Sent: Friday, January 27, 2012 1:06 PM
To: 'Rapp, Dr. William V'; AMorrison@xand.com
Cc: 'Rob Kenney'; 'Richard G. Klein'; 'Arthur Michaelson'; 'Nicholas Malito'; Ionut Crivac
Subject: RE: re Genometrica Research Inc. v. Boris Gorbovitski, Vera Gorbovitski aka Vera Gorfinkel, and Advanced BioMedical Machines, Inc.; Case No. CV-11-5802 (ADS-AKT)
Attachments: Stip re Briefing Schedule (01274505) (2).DOC

Dear Mr. Rapp:

We are writing to inform you that following the receipt of your January 25, 2012 e-mail, we had a conversation with one of Judge Spatt's law clerks. She has confirmed what the judge's rules state, i.e., that the parties may ask to set briefing schedules for motions. The request should be in writing with a preference toward a stipulation. A request may also be submitted by letter. In that case, the requesting party must say whether the other side consents to the dates in the proposed briefing schedule.

In practice, both Intellectulaw and Hofheimer Gartlin & Gross LLP have always submitted these requests in the form of a stipulation, since it presents clarity in its simplicity. Further, in our collective experience, U.S. District Courts rarely deny a stipulated briefing schedule so long as it is within reason. Finally, we believe that a 60-day extension would be within reason, as District Courts in general, and Judge Spatt specifically, have approved them in the past.

Accordingly, we have prepared and hereby forward both to you and Mr. Morrison, our proposed STIPULATION AND ORDER FOR EXTENSION OF TIME. We note that such Stipulation not only extends our time to respond to your clients' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) but also extends our time to file an Amended Complaint pursuant to FED. R. CIV. P. 15(a).

If there are no changes, we request that Mr. Morrison download it, sign it and return it to us, as soon as possible.

As soon as we receive it and file it with the Court, we would be more than happy to consider meeting with you and Mr. Morrison, pursuant to your and Mr. Morrison's request, set forth herein below. Provided however, that in view of such a late notice, we will not be able to meet on January 31, 2012. Incidentally, it would be very helpful if you provided us with an agenda setting forth all of the issues that you would like to discuss with us during such meeting.

Once again, your professional courtesies are appreciated.

P. Betty Tufariello
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-----Original Message-----

From: Rapp, Dr. William V. [mailto:wrapp@law.pace.edu]
Sent: Thursday, January 26, 2012 1:59 PM
To: Betty Tufariello; AMorrison@xand.com
Subject: RE: re Genometrica Research Inc. v. Boris Gorbovitski, Vera Gorbovitski aka Vera Gorfinkel, and Advanced BioMedical Machines, Inc.; Case No. CV-11-5802 (ADS-AKT)

PRIVILEGED AND CONFIDENTIAL

Dear Ms. Tufariello, Mr. Morrison suggests having a meeting among the attorneys at 2:00pm next Tuesday January 31, 2012 at the offices of Hofheimer Gartlir and Gross LLP in New York City. Sincerely, William V. Rapp, Esq. Co-counsel for Boris Gorbovitski, Vera Gorbovitski aka Vera Gorfinkel

From: Rapp, Dr. William V.
Sent: Wednesday, January 25, 2012 10:11 AM
To: Betty Tufariello; AMorrison@xand.com
Subject: RE: re Genometrica Research Inc. v. Boris Gorbovitski, Vera Gorbovitski aka Vera Gorfinkel, and Advanced BioMedical Machines, Inc.; Case No. CV-11-5802 (ADS-AKT)

Dear Ms. Tufariello, As I explained on the phone I had to discuss your request with my co-counsel Mr. Morrison before I could agree to your request. Mr. Morrison is a very experienced litigator and has tried several cases in NY Federal Court and knows the judges and court process extremely well. After discussing your request with him last night it appears that in this case the District Judge and the Magistrate Judge handling the case operate a very strict docket and courtroom. Thus any change requires that the attorneys go through an application process. Therefore while normally we would be able to comply with your request as a professional courtesy in this case that is not possible. Thus Mr. Morrison suggests that we organize a meeting of the attorneys including someone from Hofheimer Gartlir and Gross LLP and discuss how to approach the Court. Sincerely, William V. Rapp, Esq

From: Betty Tufariello [Betty@intellectulaw.com]
Sent: Tuesday, January 24, 2012 4:38 PM
To: Rapp, Dr. William V.
Subject: re Genometrica Research Inc. v. Boris Gorbovitski, Vera Gorbovitski aka Vera Gorfinkel, and Advanced BioMedical Machines, Inc.; Case No. CV-11-5802 (ADS-AKT)

Mr. Rapp:

Pursuant to your request we are writing to confirm the sum and substance of our telephone request a few moments ago. To wit: that you stipulate to the continuance of Genometrica Research Inc.'s date to file its Opposition to your clients' Motion to Dismiss from February 2, 2012, to Monday March 4, 2012, with the understanding that we will reciprocate, in the event it ever becomes necessary in the future.

Your professional courtesies are greatly appreciated.

Sincerely,

P. Betty Tufariello
Intellectulaw™

The Law Offices of P.B. Tufariello, P.C.

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Betty Tufariello

From: Betty Tufariello
Sent: Tuesday, January 24, 2012 4:39 PM
To: wrapp@law.pace.edu
Subject: re Genometrica Research Inc. v. Boris Gorbovitski, Vera Gorbovitski aka Vera Gorfinkel, and Advanced BioMedical Machines, Inc.; Case No. CV-11-5802 (ADS-AKT)

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